U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

[redacted]

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DATE: OCT 14 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant visa petition seeking to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a company incorporated in Delaware, provides Information Technology solutions to the travel industry. The petitioner claims to be a subsidiary of the beneficiary's foreign employer, [redacted], located in India. The petitioner seeks to employ the beneficiary in the position of Software Engineer for a period of three years.

The director denied the petition on May 30, 2009, concluding that the petitioner failed to submit credible evidence of the qualifying relationship between the U.S. entity and foreign company.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in this proceeding is whether a qualifying relationship exists between the foreign company and the United States entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer is the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner claims that the petitioner is wholly-owned by the beneficiary's foreign employer, [redacted] located in [redacted] In support of this claim, the petitioner submitted: (1) the Petitioner's Organizational Proceedings filed with the [redacted] in March 2001, indicating that its entire stock capital was 100 shares and it was issued to the foreign company; (2) The petitioner's Certificate of incorporation; (3) the foreign company's audited financial statement, dated March 31, 2008, that stated the petitioner is a wholly owned subsidiary of the foreign company; (4) the petitioner's stock transfer ledger that listed only the original 200 shares issued on a stock certificate number 00; (5) a letter from the petitioner's CPA that stated that the foreign company is the 100 percent shareholder of the petitioner and the share capital is $598,001.00; (6) the petitioner's corporate tax returns that indicate in Schedule K that the foreign company has 100 percent voting rights in the petitioner; (7) the petitioner's stock certificate number 00 that was not signed or certified; (8) the petitioner's stock certificate number 01 certifying that the foreign company is the owner of 100 shares of the common stock of the petitioner; (9) the petitioner's stock certificate number 02 certifying that the foreign company is the owner of 100 shares of common stock of the petitioner; (10) stock certificate

number 03 certifying that the foreign company is the owner of 500,000 shares of common stock of the petitioner.

On May 30, 2009, the director denied the petition concluding that the petitioner failed to submit credible evidence of the qualifying relationship between the U.S. entity and foreign company; and, that the United States entity is doing business as required by the regulations.

The director noted several inconsistencies in the documentation such as the stock ledger that listed only one stock certificate, number 00, but the petitioner submitted four stock certificates, numbers 00, 01, 02, and 03. The director also noted that the total of shares certified in the stock certificates was not the same amount of shares as listed in the petitioner's Auditor's Report.

On appeal, counsel for the petitioner explained the petitioner's history of issuing stock certificates and further explained the discrepancies noted by the director. Counsel stated that the stock certificate number 00 was a draft and was never submitted for certification, and that stock certificate number 01 was subsequently voided. The remaining two stock certificates indicate that the foreign company is the sole owner of the petitioner. This information is further corroborated by the documentation submitted by the petitioner as discussed above.

In reviewing the record, the AAO withdraws the director's conclusion that the evidence is insufficient to establish that a qualifying relationship exists between the foreign company and the United States entity. As discussed above, the petitioner submitted stock certificates number 01, 02 and 03, indicating that the foreign company is the holder of 500,100 common stock of the U.S. entity; the Articles of Organization of the U.S. entity identifying the foreign company as the sole owner, and the auditor's report of the foreign company stating that the petitioner is a wholly owned subsidiary of the foreign company. The petitioner provided sufficient evidence to establish that the foreign company is the parent company of the U.S. company, and thus the U.S. entity is a subsidiary of the foreign company and they have a qualifying relationship.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.